

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

MATTHEW R. FOX, :  
 :  
Plaintiff-Appellee, : CASE NO. CA2014-02-027  
 :  
- vs - : OPINION  
 : 7/6/2015  
 :  
LISA A. FOX, :  
 :  
Defendant-Appellant. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. DR12-10-1140

Matthew R. Fox, 3830 Reemelin Road, Cincinnati, Ohio 45211, plaintiff-appellee, pro se  
J. Gregory Howard, 110 Main Street, Hamilton, Ohio 45013, for defendant-appellant

**RINGLAND, J.**

{¶ 1} Defendant-appellant, Lisa Fox n.k.a. Lisa Best (Mother), appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, finding her in contempt for denying parenting time to Matthew Fox (Father).

{¶ 2} On June 25, 2013, during the pendency of their divorce proceedings, the parties entered into an agreement setting forth the guidelines for parenting time. Father

subsequently filed multiple contempt motions alleging that Mother was denying him the parenting time he was entitled to pursuant to that agreement on numerous occasions.

{¶ 3} Following multiple hearings, the trial court found Mother in contempt for the following dates in 2013: July 10 and 11, September 10, 13-15, 24, 27, 28, and 29, October 2, 8, 11, 12, 25 and 26.

{¶ 4} Mother appeals, raising a single assignment of error for review.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ERRED IN FINDING THE APPELLANT/MOTHER IN CONTEMPT FOR DENYING APPELLEE/FATHER PARENTING TIME WITH THE MINOR CHILDREN OF THE MARRIAGE.

{¶ 7} "Disobedience to court orders may be punished by contempt." *Cottrell v. Cottrell*, 12th Dist. Warren No. CA2012-10-105, 2013-Ohio-2397, ¶ 11; R.C. 2705.02(A). To support a contempt finding, the moving party must establish by clear and convincing evidence that a valid court order exists, that the offending party had knowledge of the order, and that the offending party violated such order. *Hetterick v. Hetterick*, 12th Dist. Brown No. CA2012-02-002, 2013-Ohio-15, ¶ 35.

{¶ 8} "Proof of purposeful, willing or intentional violation of a court order is not a prerequisite to a finding of contempt." *Pugh v. Pugh*, 15 Ohio St.3d 136 (1984), paragraph one of the syllabus. Instead, "it is irrelevant that the transgressing party does not intend to violate the court order. If the dictates of the judicial decree are not followed, a contempt violation will result." *Id.* at 140.

{¶ 9} In reviewing a trial court's finding of contempt, an appellate court will not reverse such a finding absent an abuse of discretion. *Grow v. Grow*, 12th Dist. Butler Nos. CA2010-08-209, CA2010-08-218, and CA2010-11-301, 2012-Ohio-1680, ¶ 73. An abuse of discretion means more than an error of judgment; it implies that the trial court's attitude was

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

**July 10-11, 2013**

{¶ 10} Mother admits that she denied Father parenting time on July 10 and 11, 2013, but claims that she was merely exercising her right to extended parenting time during the summer. In turn, Father argues that Mother failed to provide the required 60 days of notice before exercising the right to that extended parenting time.

{¶ 11} Mother claims she was unable to comply with the court order because it was not possible to provide 60 days of notice before the school year began. Once a movant establishes a prima facie case of contempt, the burden then shifts to the contemnor to prove an inability to comply with the court order. *Dewsnap v. Dewsnap*, 12th Dist. Clermont No. CA2007-09-094, 2008-Ohio-4433. The inability that excuses compliance cannot be self-imposed, fraudulent, or due to an intentional evasion of the order. *Id.*

{¶ 12} We find that Mother was entitled to extended parenting time during the summer the parties entered into the parenting agreement. Given that the agreement was not entered into until June 25, 2013, it was not possible for Mother to provide 60 days of notice prior to exercising her extending parenting time. The summer would have concluded before the requisite amount of time had passed. Therefore, Mother was incapable of complying with the agreement in exercising her right to extended parenting time. Thus, we find that the trial court abused its discretion in finding Mother in contempt for denying Father parenting time on July 10 and 11, 2013.

**September 10, 2013**

{¶ 13} The trial court's entry states that Father's "motion for contempt regarding 9/10/13 is Granted." However, a review of the record reveals that Father did not file a motion for contempt regarding that date.

{¶ 14} It is axiomatic that an alleged contemnor must be afforded due process in a civil contempt proceeding. *Courtney v. Courtney*, 16 Ohio App.3d 329, 332 (3d Dist.1984); *In re Oliver*, 333 U.S. 257, 274-275, 68 S.Ct. 499 (1948). Due process requirements, together with R.C. 2705.03, require that an individual accused of indirect contempt be given "adequate notice, time to prepare any defense and an opportunity to be heard." *State ex rel. Miller v. Waller*, 10th Dist. Franklin App. No. 04AP574, 2004-Ohio-6612, ¶ 7, quoting *Rose v. Rose*, 10th Dist. Franklin App. No. 96APF09-1150 (Mar. 31, 1997); see also *Culberson v. Culberson*, 60 Ohio App.2d 304, 306 (1st Dist.1978). More specifically, due process considerations require that the alleged contemnor "have the right to notice of the charges against him, a reasonable opportunity to defend against or explain such charges, representation by counsel, and the opportunity to testify and to call other witnesses, either by way of defense or explanation." *Waller* at ¶ 7; *Courtney* at 332.

{¶ 15} In the present case, Mother was afforded reasonable notice of the contempt charges on all of the dates except September 10, 2013. Mother was not provided notice that she would need to defend against the allegation that she denied Father parenting time on that date. Accordingly, we find that the trial court abused its discretion in finding Mother in contempt with respect to a date for which Father did not file a motion for contempt and Mother was not given reasonable notice of the charge against her.

#### **Remaining Dates**

{¶ 16} Finally, the trial court found Mother in contempt for denying parenting time to Father on September 13-15, 24, 27, 28, and 29, and on October 2, 8, 11, 12, 25 and 26, 2013. In each of these instances, Mother admits to denying the parenting time to Father. However, Mother argues that she was justified in denying the parenting time because she was acting on the instructions of Clermont County Children Services and because Father was taking the children to his girlfriend's residence for weekend overnights.

{¶ 17} The trial court found that Mother failed to provide sufficient evidence to support her defense that the Clermont County Children Services advised her to deny parenting time to Father, or that Father was taking the children to his girlfriend's house for overnights. Mother failed to introduce any evidence from an employee of Clermont County Children Services to support her claim that she was advised to deny Father parenting time. That defense was based solely on Mother's allegations. The trial court, as the trier of fact, being in the best position to weigh the credibility of the witnesses, found Mother's bare assertions to be insufficient. *Nguyen v. Chen*, 12th Dist. Butler No. CA2013-10-191, 2014-Ohio-5188, ¶ 53.

{¶ 18} Furthermore, Mother introduced no evidence to prove that Father took the children to his girlfriend's house for overnights. Mother directed the court to Father's testimony that he had allowed their children to have contact with his girlfriend's children as proof that he violated the parenting agreement by taking the children on overnights to the girlfriend's residence. However, the trial court recognized that Father was not forbidden from taking the children to his girlfriend's residence during the day. Therefore, the trial court found that the contact Father admitted to was insufficient to prove that Father violated the parenting agreement by taking the children to his girlfriend's residence on overnights.

{¶ 19} Mother repeatedly asserts that her denial of Father's parenting time was not willful or wanton. However, as set forth above, “[p]roof of purposeful, willing or intentional violation of a court order is not a prerequisite to a finding of contempt.” *Pugh*, 15 Ohio St.3d 136, paragraph one of the syllabus.

{¶ 20} Accordingly, we find that the trial court did not abuse its discretion in finding Mother in contempt for denying Father parenting time on September 13-15, 24, 27, 28, and 29, and on October 2, 8, 11, 12, 25 and 26, 2013, where Mother admitted to denying Father parenting time and failed to provide sufficient evidence in defense of her actions.

{¶ 21} In light of the foregoing, we find that (1) the trial court abused its discretion in finding Mother in contempt for July 10-11, 2013, where Mother was incapable of complying with the parenting agreement in exercising her right to extended parenting time, (2) the trial court abused its discretion in finding Mother in contempt for September 10, 2013, where Mother was not given notice of the charge against her for that date, and (3) the trial court did not abuse its discretion in finding Mother in contempt for denying parenting time to Father on September 13-15, 24, 27, 28, and 29, and on October 2, 8, 11, 12, 25 and 26, 2013, where Mother admitted to denying Father parenting time and failed to provide sufficient evidence in defense of her actions.

{¶ 22} Judgment affirmed in part and reversed in part.

S. POWELL, P.J., and HENDRICKSON, J., concur.